



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/171653

PRELIMINARY RECITALS

Pursuant to a petition filed January 27, 2016, under Wis. Stat., §49.85(4), to review a decision by the Public Assistance Collection Unit (PACU) to utilize a tax intercept to recover a FoodShare (FS) overpayment, a hearing was held on March 2, 2016, at Madison, Wisconsin, with the ALJ appearing by telephone.

The issue for determination is whether the PACU may use a tax intercept to recover an FS overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

|

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner received FS during the period January 1, 2012 through March 31, 2014. On September 18, 2014, the county agency issued notices to petitioner informing her that she was overpaid the following amounts: \$1,195 from January 1 through September 30, 2012, claim no. [REDACTED], \$3,330 from February 19 through December 31, 2013, claim no. [REDACTED], and \$996 from January 1 through March 31, 2014, claim no. [REDACTED]. The total amount was \$5,521. The

- notices included information that petitioner could appeal within 90 days if she disagreed with the agency action. Exhibits 1A-1C.
3. On September 22 and 23, 2014 Ms. [REDACTED] and her supervisor spoke to petitioner about the overpayment. The overpayment notices were returned to the agency. During the September 23 conversation petitioner gave Ms. [REDACTED] a new address on [REDACTED]. At petitioner's request Ms. [REDACTED] left copies of the notices and other paperwork for petitioner to pick-up at the agency. Exhibit 2, page 5.
 4. The county sent a repayment agreement to petitioner at the [REDACTED] address on October 2, 2014. Exhibit 4. On January 13, 2015 petitioner spoke with Ms. [REDACTED] about possibly getting a waiver of the recovery; Ms. [REDACTED] referred her to the PACU. Exhibit 2, page 3. Petitioner spoke to the PACU that same day about a waiver, but the request was denied. Exhibit 2A.
 5. The county recovered \$51 that was applied to claim no. [REDACTED] by reducing petitioner's current FS in the months of November, 2014 through February, 2015. Petitioner made no other payments on the claims. Exhibit 6.
 6. Petitioner did a health care review in March, 2015. She reported that she lived at the [REDACTED] address. Exhibit 3A.
 7. The county sent petitioner three "dunning" notices for the overpayments in March, April, and May, 2015. All were sent to the [REDACTED] address.
 8. On June 8, 2015, the PACU sent petitioner a notice informing her that it intended to intercept her state tax refund to recover the overpayment. Exhibit 3. The notice was sent to the [REDACTED] address.
 9. On July 10, 2015 petitioner again requested that the PACU waive the overpayment recovery. Again the request was denied. Exhibit 2A.
 10. Petitioner filed this appeal on January 27, 2016. It was the first mention of appealing an overpayment.

DISCUSSION

Wis. Stat., §49.85(2)(a), provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, FS, and Medical Assistance. The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at §49.85(3)(a). The tax intercept notice must be sent to the person's last known address. Id.

The hearing right is described in Wis. Stat., §49.85(4)(a), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or *that could have been presented at a prior opportunity for hearing.*

Italics added.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The

federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

The federal regulation concerning FS overpayments begins: "The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error...." 7 C.F.R. §273.18(b). Once timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Admin. Code, §HA 3.05(3)(b).

I wrote extensive findings of fact because petitioner insisted at the hearing that she was never informed about the overpayment and never received any notices about it. As seen in the findings, petitioner was fully aware of the overpayment and had a number of contacts with the county and the PACU. The agency even partially recouped the overpayment from petitioner's then current FS.

Petitioner argued that Ms. [REDACTED] was lying about the contacts and that the case notes were falsified. I find as a fact that petitioner was aware of the overpayment and that the contacts occurred as Ms. [REDACTED] testified and as recorded case notes show. Petitioner did not even attempt to explain why Ms. [REDACTED] would go to all that trouble of creating a false overpayment claim. Petitioner did mention that she had a federal lawsuit ongoing, but since Dane County Human Services and Ms. [REDACTED] are not part of the lawsuit, it cannot be a reason why Ms. [REDACTED] would falsify a claim against her.

Under the clear mandate of the statute, petitioner was notified about the overpayment. She made only a few small payments before stopping. She filed this appeal over 16 months after the claims were issued. The recovery of the overpayment, therefore, is allowed.

CONCLUSIONS OF LAW

Petitioner's appeal of a \$5,521 FS overpayment was untimely, and thus the agency may use all legal means, including tax intercepts, to recover it.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 7th day of March, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 7, 2016.

Dane County Department of Human Services
Public Assistance Collection Unit